

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16345 of Elwood Gray, pursuant to 11 DCMR 3108.1 for a special exception under Subsection 205.1, to establish a child development center for 10 children, ages 2 1/2 to 14 and five staff on the basement through the second floor of an existing structure in an R-1-B District at premise 5500 New Hampshire Avenue, NW, (Square 1389, Lot 823).

HEARING DATE: May 20, 1988
DECISION DATE: July 8, 1998

ORDER

SUMMARY OF EVIDENCE:

The site is located on the west side of New Hampshire Avenue, NW, between Kennedy and Longfellow Streets, NW, and comprises one lot of record (Lot 823) containing 4,449 square feet of land area. The subject premises is known as 5500 New Hampshire Avenue, NW.

The site is located in an R-1-B District. The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. The zoning provisions of this district are intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted.

The area surrounding the subject site has a mix of residential uses, and is traversed by a heavy traffic flow at the three-way intersection of North Capitol and Kennedy Streets and New Hampshire Avenue.

The Applicant proposes to establish a child development center for 10 children, ages 2 1/2 to 14 and five staff, on the basement through the second floor of an existing structure in an R-1-B District at premises 5500 New Hampshire Avenue, NW.

The Zoning Regulations allow for a privately owned and operated child development centers in R-1-B zone districts as a matter of right.

Issues and Arguments

Section 205-Child Development Centers

Section 205.1: Use as a child development center shall be permitted in an R-1-B District, if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of the Zoning Regulations.

Section 3108 - Special Exceptions

The Board of Zoning Adjustment is authorized to grant special exceptions, where in the judgement of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

The Applicant did not address the provisions of this section.

Section 205.2: The center shall be capable of meeting all applicable codes and licensing requirements.

The Applicant testified that he was in the process of meeting the applicable codes and requirements necessary to operate a child development center in the District of Columbia. He commented that it was as a result of his attempt to get a certificate of occupancy for the proposed use that he was referred to the Board of Zoning Adjustment, as required pursuant to 11 CMR Section 205.

Section 205.3: The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.

The Applicant testified that the location of the center did not create any objectionable traffic condition or unsafe condition for the picking up and dropping off of children and that there is ample space to do so in the parking lot and alley which are adjacent to the subject site.

Mr. Jordan Davis, President of The Longfellow Street Unit Club, testified that the subject site is located at the intersection of North Capitol and Longfellow Streets, and New Hampshire Avenue, NW, which are all heavily traveled streets. He further testified that this area does not provide ample parking for parents dropping off or picking up their children at the center at times, which would coincide with traffic peak hours.

Advisory Neighborhood Commissioner, Vannie Taylor III, for Single Member District 4B-07, testified that because of the heavy traffic in the area and totally inadequate drop-off and pick-up space, there is no safe space for the additional traffic that the proposed center would generate. He commented that even if the Applicant chose to use the public alley, which is adjacent to the subject site, it would still be inadequate, because the alley is frequently traveled by residents and persons who have businesses in the neighborhood.

The Board requested that the Applicant submitted a plan showing the parking spaces for the center and the location of the drop-off and pick-up areas for children attending the center.

Section 205.4: The center shall provide sufficient off-street parking spaces to meet the reasonable need of teachers, other employees and visitors.

The Applicant testified that there are seven existing parking spaces and only five are required.

Commissioner Taylor, testified that from his observations there is only space for three parking spaces.

The Board requested that the Applicant submit a plan showing the location of the parking spaces.

Section 205.5: The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.

The Applicant testified that although the premises had a large yard on the side of the house, he did not intend to allow the children to play there because of its proximity to the extremely busy Kennedy Street.

Mr. Jordan Davis testified that there is no outdoor play space at the subject site.

Section 205.6: The Board may require special treatment in the way of design, screening of buildings, parking areas, signs, or other requirements as it shall deem necessary to protect adjacent and nearby properties.

This provision was not addressed by the Applicant or the Board.

Section 205.7: The off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center.

The Applicant testified that he intended to bus the children to the nearby Takoma Park Recreation Area which has adequate swimming and exercise space and he will provide adequate staff to oversee the children's activities while they are there.

In response to questions from the Board, the Applicant testified that he did not have a plan for protection of the children while on a public play area.

Section 205.8: The Board may approve more than one (1) child development center in a square or within one thousand feet (1,000 ft.) of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to the traffic, noise, operations or similar factors.

Neither the Applicant nor the Board addressed this condition.

Section 205.9: Before taking final action on an application for use as a child development center, the Board shall submit the application to the D.C. Departments of Public Works (DPW) and Human Services (DHS) and the D.C. Office of Planning (OP) for review and written reports.

The Board referred the application to DPW, DHS and OP, for review and written reports. None of these agencies filed a report.

Section 205.10: The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center could meet all licensing requirements set forth in the applicable laws of the District of Columbia.

In a letter to the Board, dated April 28, 1998, The Longfellow Unit Block Club opposed the application. Residents and members of the Longfellow Unit Block Club submitted a petition with 29 signatures in opposition to the proposed application. They identified the following concerns:

- (1) Concern for the safety of the children, considering the heavy traffic at the intersection of North Capitol and Kennedy Streets and New Hampshire Avenue, NW.
- (2) The area does not have ample parking for parents bringing or picking up their children from the center.
- (3) There is no space for an outdoor play area.
- (4) The subject site is not in a healthy environment for a child development center given the questionable activities on Kennedy Street, NW.

Residents of the neighborhood who testified in opposition were, Commissioner Vannie Taylor III of ANC 4B-07, Jordan Davis, Richard Mosley and Grace Littlejohn.

The record was closed except for the following items:

- (1) A letter to be submitted by the ANC stating their position on the application.
- (2) A copy of the current Certificate of Occupancy for the church from the Applicant.
- (3) A site showing the pick-up and drop-off plan for the children.
- (4) A description of the arrangement made for the children to use the Takoma Park Recreational Facility.

- (5) A layout of the play area and the type of equipment that would be available to the children at the Takoma Park Recreational Facility.
- (6) A traffic analysis of the area, focusing on traffic flow and parking availability.
- (7) A copy of the agreement with Howard University's volunteer office regarding the provision of volunteers to work as staff for the center.

The decision date was scheduled for July 8, 1998.

FINDINGS OF FACT:

- (1) The proposed location of the center is at a three-way intersection, which has a constant and heavy traffic flow.
- (2) The subject site does not have adequate play area space for the children.
- (3) The site does not have the required amount of parking spaces.
- (4) There are inadequate drop-off and pick-up areas for parents whose children might attend the center.
- (5) Residents and representatives of the Fourth District of the D.C. Metropolitan Department have identified the immediate area in which the subject site is located as a drug problem area.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a child development center in an R-1-B District. The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The Applicant must also meet the requirements of Section 205 regulating Child Development Centers.

The Board concludes that the Applicant has not met the burden of proof. The Board is of the opinion that the subject application is not in harmony with the general purpose and intent of the Zoning Regulations. The Board concludes further that the Applicant does not meet the requirements of Section 205 regulating child development centers.

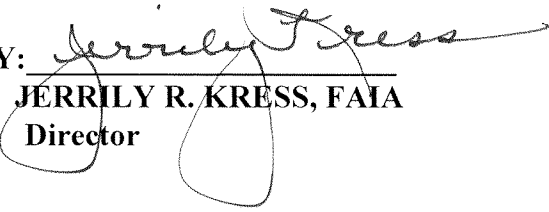
The Board notes that neither the Applicant nor the ANC submitted the documents requested by the Board which were due by June 19, 1998.

In light of the foregoing, the Board hereby **ORDERS** that the application be **DENIED**.

VOTE: **3-0** (Sheila Cross Reid, Betty King and Anthony Foushee to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


JERRILY R. KRESS, FAIA
Director

Final Date of Order: OCT 21 1999

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

O16345/poh

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16345:

As Director of the Office of Zoning, I certify and attest that on OCT 21 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Elwood Gray
13114 Holdridge Road
Silver Spring
Maryland 20907

Ms. Grace M. Littlejohn, Commissioner
Advisory Neighborhood Commission 4B
41 Kennedy Street, NE
Washington, D.C. 20011

Mr. Vannie Taylor III, Commissioner
Advisory Neighborhood Commission 4b-07
5615 1st Street, NW
Washington, D.C. 20011

Richard Mosely, President
South Manor Neighborhood Association
37 Milmarson Place, NW
Washington, D.C. 20011

Mr. Jordan Davis, President
Longfellow Unit Block Club
53 Longfellow Street, NW
Washington, D.C. 20011

Attested by:


JERRILY R. KRESS, FAIA
Director

Date: OCT 21 1999

Attest/O16435/POH